Central Law Journal.

St. Louis, Mo., March 24, 1922.

POWER OF CONGRESS OVER INTRASTATE RAILROAD RATES.

The Supreme Court of the United States, on February 27th, decided the cases of Railroad Commission of Wisconsin, et al. v. Chicago, B. & Q. R. Co., and State of New York v. The United States, laying down the rule that Congress has the power and authority to establish intrastate rates in conformity with interstate rates, and that the Interstate Commerce Commission has this authority derived from its obligation under the law to prevent "undue, unreasonable and unjust discrimination against interstate commerce."

The power and the reasons therefor appear to be: Congress in its control of its interstate commerce system is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The states are seeking to use the same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress as the dominant controller of interstate commerce may therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. In such development, it can impose any reasonable condition on a state's use of interstate carriers for intrastate commerce, it deems necessary or desirable. This is because of the supremacy of the national power in this field.

Speaking of the relative earnings of the roads from the two sources, Mr. Chief Justice Taft, in the first of the cases mentioned, said:

"Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty per cent. of the gross freight receipts of the railroads of the country are from intrastate traffic, and fifty per cent. of the passenger receipts. The ratio of the gross intrastate revenue to the interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system."

The blending of intrastate and interstate commerce so that the effective regulation of the latter requires regulation of the former, was pointed out by the Court as follows:

"Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them. Commerce is a unit and does not regard state lines, and while under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso."

This decision removes one of the greatest handicaps to effective railroad regulation and operation in the past. The railroads of the country are in practice a single institution, in as much as commerce flows through them in all directions and without regard to state lines. Yet state laws and state regulations have made the railroads as a whole subject to the authorities of

forty-eight states, whose conflicting legislation has often set up intolerable restrictions upon interstate traffic, and created discriminations as unjust to the people generally as to the railroads. Railroads traversing several states found themselves burdened by different laws and regulations in each state, causing endless confusion and greatly increasing the costs of operation as well as the difficulty of complying with the laws. In many states laws have been passed and enforced making rates or establishing conditions of service utterly destructive of profitable operation. The decline of prosperity which threw so many railroads into bankruptcy before the war, which caused the great deterioration of equipment and service with others, and which put a stop to railroad extension and betterment, was largely due to the hardships caused by the destructive and conflicting legislation of the states.

It is essential to the welfare of the country that it have adequate transportation service. It is essential to the development and maintenance of such service that the railroads have sufficient revenues to provide it. These are axiomatic truths. If the public is to be protected in the matter of rates by governmental regulation a responsibility rests upon government to assure the reasonable service that is just as necessary to the public interest as reasonable rates. It has long been obvious that fair rates and fair service, fair, that is to say, to all, could not be maintained through state agencies, that a single control, direction and responsibility was essential. The aim of the Transportation Act of 1920 was to establish such a single control, and through it to secure to the people of the United States an adequate transportation service at the lowest cost consistent with operation at a reasonable profit. The decision of the Supreme Court finally and completely establishes the right of the federal government to this supreme and individual control over these essential agencies of commerce.

NOTES OF IMPORTANT DECISIONS.

LIABILITY OF CARRIER FOR INJURY TO PASSENGER THROWN DOWN BY SPEED OF CAR IN ROUNDING CURVE.—The Supreme Court of Michigan, in Clifford v. Detroit United Ry., 185 N. W.741, lays down the rule that is fairly well known at the present time that a street car company is not liable for injury to a passenger, thrown down before he reached a seat, due to the rapid speed of the car necessary and incidental to efficient operatroit United Ry., 185 N. W. 741, lays down the starting. It will be noticed that the words "necessary and incidental to the efficient operation" are used, which would indicate that if such rate of speed were not necessary and incidental to the efficient operation of the car, the holding would be otherwise. We quote from the decision of the court as follows:

"We are not, it will be noted, here dealing with an accident which resulted from a car, running at high speed on a straight track, taking or attempting to take a curve or a switch without slowing down. Here the car was obliged to round the curve shortly after starting in order to get onto Jefferson. It is obvious that more power must be applied to round a curve than to go in a straight direction. Plaintiff was then suffering no infirmity, and except in special cases the carrier may start the car before all passengers have been seated. Street cars start and stop quickly; this is a common incident to their efficient operation, and without it any semblance of rapid transit would be impossible."

ONE PAYING PREMIUMS ON POLICY WITHOUT AGREEMENT WITH INSURED ACQUIRES NO LIEN ON FUND.—Where a wife paid premiums on endowment policy on her husband's life, which policy named her as beneficiary, but provided for payment to the husband in case he survived the endowment period, such payments being made by the wife without any expectation that they would be paid and with no intention as to keeping or holding the policy as security, it is held by the Court of Chancery of New Jersey in Gifford v. Gifford, 115 Atl. 654, that she acquired no lien on the fund from the mere payment of the premiums.

In this respect the Court said:

"I have looked beyond the single issue raised by the pleadings—i. e., that the complainant's rights were contractual—to see whether Mrs. Gifford could not have back her money on other grounds, for it would seem but equitable that, having sown the fund, she ought to get back her seed. But my examination of the authorities satisfies me that com-

plainant's alleged ground for relief—pledge—was the only one she could stand on, and in this she has failed. There are exceptions under peculiar circumstances. For instance, a pledgee of the policy, who pays the premiums to protect his security, is entitled to be reimbursed out of the fund. Leslie v. French, 23 Ch. D. 552. So a joint beneficiary who pays the premium to preserve his interest may call upon his co-beneficiary for contribution out of the fund. Stockwell v. Mutual Life Ins, Co., 140 Cal. 198, 73 Pac. 833, 98 Am. St. Rep. 25; McKenell v. Gowans, 2 L. R. Ch. (1912) 648. It has been held that a person paying the premiums at the request of a beneficiary, whose interest in the policy lapsed by her death before the insured, was entitled to be repaid out of the fund as against the ultimate beneficiaries. Morgan v. Mutual Benefit Ins. Co., 132 App. Div. 455, 116 N. Y. Supp. 989. And, where premiums or assessments were paid by one under the mistaken idea that he was a beneficiary, equity has ordered that he be reimbursed. Tepper v. Royal Arcanum, 59 N. J. Eq. 321, 45 Atl. 111. But not where the premiums were paid by a nominated beneficiary, who knew that he could be deposed, as in Spengler v. Spengler, 65 N. J. Eq. 176, 55 Atl. 285. Aside from these and kindred situations I have found no authority for a lien for premiums paid, except the right rests in contract. And this holds true as between husband and wife. Leslie v. French, supra. Mrs. Gifford does not come within the category of the exceptional situations. She paid the premiums knowing her own legal rights and those of her husband under the policy, viz: if he were to die within twenty years she would benefit, and if he survived he would take. She had no misconception as to her status, and consequently is not entitled to a lien on that score. Spengler v. Spengler, supra."

WORKMAN INJURED WHILE RIDING HOME FROM WORK IN CONVEYANCE FURNISHED BY EMPLOYER ENTITLED TO COMPENSATION.—An employee of a mine returning from work was injured in alighting from a train operated under an agreement between the employer and a railroad company as a private carrier for the exclusive carriage of the employees of the mine to and from work. Held by the Appellate Court of Indiana in American Coal Mining Company v. Crenshaw, 133 N. E. 394, that the injury arose out of and in the course of the employment within the Workmen's Compensation Act, although by agreement the employer retained from the wages of the employees a stipulated sum per month for the privilege of using the train. Touching on this point, the Court said:

"From the foregoing authorities the general rule seems to be that where the conveyance for the employees has been provided by the employer, after the real beginning of the employment, whether such conveyance be his own or is one used for his benefit by virtue of a contract with another, the same being in compliance with one of the implied or express terms of the contract of employment, for the mere use of the employees, and is one which the employees are required, or as a matter of right are permitted, to use by virtue of their contract of employment, the employer is liable. In the instant case it is undisputed that the train which was carrying appellant's miners, including the decedent, to and from their place of work was being operated under a contract between appellant and the railroad company, and that the consideration for such operation was paid by appellant. We attach no importance to the fact that the employee had agreed to pay, and was paying at the time of the injury, $1.25 per month for the privilege of using the train, such sum being retained by appellant from the employee's wages. This was but an incident of his employment. It also appears that the train was being used for the exclusive purpose of carrying appellant's employees, including the decedent, to and from the place of work. We follow the principle above set out, and hold that the decedent's injuries arose in due course and out of his employment."

Among the authorities referred to by the Court are the following: "In re Donovan, 217 Mass. 76, 104 N. E. 431, Ann. Cas. 1915C, 778, it was held that where a servant was injured while riding tc his place of work in a wagon which was furnished by the master incidental to the employment and is a part of the contract of employment the injury arose out of and in the course of his employment under the Workmen's Compensation Act.

"In Swanson v. Lathan & Crane, 92 Conn. 87, 101 Atl. 492, it was held that a workman whose contract required his employer to pay the expense of his transportation to and from his home while engaged in work out of town, was killed at a railroad crossing while going home after his day's work in an automobile owned and driven by a fellow workman, which had been engaged by the employer for the purpose, that the accident arose out of and in the course of the decedent's employment within the meaning of that expression in the Workmen's Compensation Act, and that the master was liable not only for the death of this particular workman, but also for that of the owner and driver of the car who was killed at the same time.

"In Scalia v. American etc., Co., 93 Conn. 82, 105 Atl. 346, it was held that the injury and death to tobacco plantation workers after they had entered into a contract of employment and while being driven to the place of work in an automobile furnished by the employer pursuant to the employment contract, arose in the course of and out of their employment.

"In Fisher v. Tidewater Bldg. Co. (N. J. Sup.) 114 Atl. 150, it was held that, where a

workman was killed some distance from the place of his employment, while boarding a train on which the employer furnished free transportation from the place of employment to the workman's home, the accident causing death was one which arose out of and in the course of his employment within the Workmen's Compensation Act, so that his widow was entitled to an award.

"In Western Indemnity Co. v. Leonard (Tex. Civ. App.) 231 S. W. 1101, it was held that, where a shipbuilding company operated under a contract with the federal government, on a cost plus profit basis and the company's expenses in furnishing railway transportation to its employees were part of the costs, and an employee, after leaving the train at the place of work and while he was on the railroad right of way, started to return to the train on seeing a signal that there would be no work that day, and was injured in jumping across a ditch between him and the train, the injury occured in the course of the employment, within the Workmen's Compensation Act.

"In Payne v. Industrial Comm., 296 Ill. 223, 129 N. E. 830, it was held that where a train crew had been relieved from service under the Hours of Service Act (U. S. Comp. St. § 8678), but had obtained permission from the train dispatcher to ride into a terminal on the first train going in that direction, and where under the rules of the company the employees were paid while deadheading into the terminal, the employees, though not on duty within the Hours of Service Act while deadheading into the terminal, were in the employ of the railroad at such time within the Workmen's Compensation Act.

"In Central Construction Co. v. Harrison, 137 Md. 256, 112 Atl. 627, it was held that, where an employer agreed to furnish employees free transportation to and from work, and arranged with railroad for such transportation, and where employees were at first transported by regular train, but later, because of increasing numbers, by special work trains, and where by subsequent agreement the payment for transportation of such employees was made direct to the railroad by the United States government, for which the work was being done, an employee, who was directed to board the wrong train, and, on discovery of mistake was injured by boarding the following regular train which would carry him to his work was injured by an accident which arose out of and in the course of his employment within the Workmen's Compensation Act."

RECENT DECISIONS IN THE BRITISH COURTS.

The House of Lords have given a startling ruling in regard to payment of bets by cheques —Sutters v. Briggs, 1921, 66 S. J. 9. By the Gaming Act, 1835, Section 1, notes, bills, and mortgages given as security for money lost in bets on horse races are deemed to be made, drawn, accepted, given, or executed for an illegal consideration. By Section 2, "in case any person shall * * * make, draw, or execute any note, etc. for any consideration on account of which the same is (by certain statutes) declared to be void, and such person shall actually pay to any indorsee, holder, or assignee of such note, etc., the amount of the money thereby secured, or any part thereof, such money so paid shall be deemed and taken to have been paid for, and in account of the person to whom such note, etc., was originally given upon such illegal consideration as aforesaid, and shall be deemed and taken to be a debt due and owing from such last named person to the person who shall so have paid such money, and shall accordingly be recoverable in any action at law." The plaintiff Briggs who had lost bets on horse racing to the defendant Sutters, drew a check in favor of Sutters crossed "Account of payee. Not negotiable." Sutters paid the check into his own account with his bankers, who collected it in due course from Briggs' bankers. Briggs subsequently decided to sue Sutters for the return of the money so paid, and based his right to recover on the decision of the Court of Appeal in Dey v. Mayo. The trial judge and the Court of Appeal entered formal judgment for the plaintiff, on the ground that the facts in the present case were indistinguishable from those in Dey v. Mayo. The House of Lords held that Section 2 of the gaming Act, 1835, entitled a person who loses a bet and pays it to recover back the amount from the payee if the payment has been made by check, *i.e.* Section 2 preserved the right of the loser of a bet to recover the amount when it was paid by a check, thenceforth made enforceable in the hands of a third party under the conditions stated in Section 1 (*Supra*). It was further held that "holder" included the original payee, and that the bankers were "holders or indorsers," even when they were mere agents for collection.

The effect of deviation from a stated voyage is to displace the special contract of the charter party or bill of lading together with all exceptions therein (see Scrutton on Charter Parties Article 99). An analogous principle in railway law is disclosed in a recent decision of the Court of Appeal.

The familiar clause in "owners risk" notes, which in consideration, be it remembered, of special terms, exempts a railway company from all liability for "loss, damage, misconveyance, misdelivery, delay or detention of or to such goods during any portion of such transit except upon proof that such arose from the wilful misconduct of the company's servants" has been the subject of two divergent interpretations. First, there is the case of Mallet v. Great Eastern Railway Co., 1899, 1 Q. B. 309, which laid down that the company notwithstanding the apparently precise and comprehensive nature of the exception clause, remains liable for non-delivery where it delivers the goods to a wrong consignee, or sends them to a wrong destination; this on the theory that in so doing the company has committed a complete default in its contract, not a mere error in performance; in short it has not performed at all.

On the other hand in Foster v. Great Western Railway Co., 1904, 2 K. B. 306, the ground on which the company's liability was based was that there had been an intentional sending of the goods by the unauthorized route, and that that was misconduct within the meaning of the reservation "wilful misconduct of the company's servants." The resulting effect is very important for if the theory of Foster's case prevails, then the company's liability for non-delivery by an unauthorized route only arises if there has been an intentional sending of the goods by that route, and not where there has been an erroneous forwarding resulting from a mistake on the part of the company's servants.

These two views were before the court in the recent case of Neilson v. London & North Western Railway Co., 66 S. J. R. 13. There a van-load was delivered by the plaintiff to the defendant railway company to be carried from Llandudno to Bolton *via* Manchester. The goods were consigned under an owner's risk contract note which contained the clause we have been discussing. The van which brought the goods had chalked on it "through to Bolton," but the individual packages were not labelled to Bolton and some had old labels attached. At Manchester by a mistake of the railway's inspector, the van was unloaded, the unlabelled packages were left in the cloak room and the labelled ones were despatched to the places named on the old labels. The plaintiffs claimed damages for the consequent loss and the question of liability ultimately narrowed itself down to the simple issue whether or not the goods were lost or detained during any portion of the transit. If the transit was authorized, then the company were protected by the exception clause, since clearly the mistake was not wilful. If the transit was not authorized, then the question arose whether Mallet's case or Forster's case was to be applied. The Court of Appeal preferred the principle of Mallet's case. It has thus been affirmed that if goods are taken by an unauthorized route, they are not lost during any portion of the transit contemplated in the contract note and therefore are not subject to its stipulations. It followed that in Neilson's case the company were held liable.

DONALD MACKAY.

STATE LEGISLATION ON INDUSTRIAL POLLUTION OF STREAMS — PART I — SPECIFIC STATE LAWS RELATING TO INDUSTRIAL POLLUTION OF STREAMS.*

Research on the subject of state legislation dealing with industrial pollution of streams reveals that, with comparatively few exceptions, the lawmakers of the several states, for many years prior to 1915, apparently did not regard the matter of sufficient importance to enact specific laws. The general practice among the states, up to that time, was to protect the public welfare through general legislation dealing with health, game and fish preservation, water power restrictions, etc., etc. In more recent years, however, there has developed a widespread tendency towards the enactment of far-reaching state legislation on industrial pollution of streams. Some of the most recent proposals would seem to seriously contravene the essential requirements of a group of industries, the nature or geographical location of which have caused or necessitated their close proximity to streams or rivers.

One of the best illustrations of such legislative proposals on this subject is that in Ohio. In the Eighty-fourth General Assembly of Ohio, regular session of 1921, a measure was introduced providing penalties for the pollution of streams, etc., the effect of which would have been so drastic that, in the language of the Secretary of

*Part II will follow next week, and will deal with general state laws or court decisions on this subject. Mr. Hickey and Mr. Sargent collaborated in the preparation of this article.

the Ohio Manufacturers' Association, "a fisherman could be arrested and convicted for spitting on his bait, or a farmer who fertilizes his fields could be arrested every time it rained." The business interests of the state of Ohio succeeded in convincing their legislators of the ridiculous aspects of the legislation, and the bill was never reported out of committee.

Another recent instance was afforded during the 1921 session of the Connecticut Legislature when a bill, equally as far-reaching as that of the legislation defeated in Ohio, was receiving favorable consideration. The Connecticut Legislative proposal is said to have resulted from a vigorous campaign conducted by the oyster industry of that state and would have made possible heavy fines and terms of imprisonment for anyone who deposited or placed where it could pass into the waters of the state, a single drop of any substance or waste known to be deleterious to fish life, without any provision as to the quantity of such refuse being made in the proposed law.

The importance of state legislation dealing with industrial pollution of streams has within the past few years become very apparent to those who are in touch with industrial legislative affairs of the several states. The chief purpose of this survey is to assemble as complete information as possible respecting legislation enacted on this subject.

The following states, through their legislatures, have dealt with the subject of industrial pollution of streams by the enactment of laws now on their statute books, which may broadly be regarded as specific in character: California, Illinois, Indiana, Maine, Maryland, Minnesota, New Jersey, North Dakota, Rhode Island, Tennessee Texas, Vermont, Washington, West Virginia and Wisconsin.

California—The principal statutes of California concerning the pollution of streams, are embraced in §§ 374-A and 635, respectively, of the Penal Code, taking effect in 1912 and 1872, respectively. Under the first section referred to, it is made unlawful to drop garbage, etc., in navigable waters or in the Pacific Ocean, or to deposit refuse of any character in any navigable water within twenty miles of any point on the coast line of the state, and makes violators of this section guilty of a misdemeanor.

Illinois—In the Fifty-Second General Assembly of Illinois (1921), a bill was passed amending legislation originally adopted in 1911. This legislation, generally referred to as "the Gregory Bill," delegated the work of preventing the pollution of streams in Illinois, to the State Department of Public Works and Buildings, and empowered the mentioned department to issue orders in regard to discharges into lakes or streams, prohibit such discharges unless the orders are complied with, and to regulate the flow of water, etc.

In general, the measure enacted by the Illinois Legislature may be described as similar to the legislation which was proposed and defeated in the same year in the states of Connecticut and Ohio. The Illinois measure specifically makes it unlawful to deposit, throw, etc., into streams, any substance deleterious to fish life and contained no provision as to what quantity of such deleterious substance might be regarded as harmful, thus leaving all persons open to conviction who deposited or permitted the deposit of a single drop of deleterious matter into streams.

Indiana—§§ 158 and 159, of the laws of Indiana, relating to the conservation of natural resources, contain specific legislative enactments dealing with industrial pollution of streams. The language of the Indiana law is extremely broad. Section 158 specifically covers the subject, as quoted below, while § 159 deals more generally with the matter of poisoning fish in streams, etc.:

158. Pollution of Streams. Sec. 4. It shall be unlawful for any person, firm or corporation, to cause, suffer, or permit any

dyestuff, acid, coal-tar, oil, logwood, or any refuse matter or substance whatever to be thrown, run or drained into any of the waters of this state in quantities sufficient to injure or destroy the lives of fish which inhabit the same at or below the point where any such substance is discharged or permitted to flow into such waters. Whoever violates any of the provisions of this section shall, on conviction, be fined not less than fifty dollars ($50) nor more than one thousand dollars ($1,000) for each offense, and each day's violation of the provisions of this section shall constitute a separate offense; Provided, that the provisions of this section shall not abridge the rights of owners of gas or oil wells to drain the waters from such wells into the waters of the state, as now permitted by law. (Acts 1913, p. 368, Burns', 1914 Sec. 2546.)

Maine—The 1917 session of the legislalature of the state of Maine enacted a specific measure dealing with the industrial polution of streams, under the terms of which the powers of the State were more clearly defined and broadened. The vital portions of the legislation then enacted, known as Chapter 98 of the Public Laws of Maine, (1917), is given below:

Section 1. Cities, towns, persons and corporations shall submit to said (public utilities) commision for its advice their proposed system of water supply or of the disposal of drainage or sewage and all petitions to the legislature for authority to introduce a system of water supply, drainage or sewage shall be accompanied by a copy of the recommendation and advice of said commission thereon. In this section the term "drainage" means rainfall, surface and subsoil water only, and "sewage" means domestic and manufacturing filth and refuse.

Sec. 2. Upon petition to said commission by the mayor of a city or the selectmen of a town, the managing board or officer of any public institution, or by a board of water commissioners, or the president or other official of a water or ice company, stating that manure, excrement, garbage, sewage, or any other matter pollutes or tends to pollute the waters of any streams, pond, spring or water course used by such city, town, institution or company, as a source of water supply, the commission shall appoint a time and place within the county where the nuisance or pollution is alleged to exist for a hearing, and after such notice thereof to parties interested and a hearing, if in its judgment the public health so requires, may, by an order served upon the party causing or permitting the pollution, prohibit the deposit, keeping or discharge of any such cause of pollution, and shall order him to desist therefrom and to remove any such cause of pollution; but the commission shall not prohibit the cultivation and use of the soil in the ordinary methods of agriculture if no human excrement is used thereon.

Sec. 3. Whoever is aggrieved by an order passed under the provisions of the preceding section may appeal therefrom to the supreme judicial court sitting in the county where appellant resides; but such notice of the pendency of the appeal as the court shall order shall also be given to the board of water commissioners and the mayor of the city or chairman of the selectmen of the town or president or other officer of the water or ice company interested in such order. While the appeal is pending, the order of the commission shall be complied with unless otherwise authorized by the commission.

Sec. 4. The supreme court shall have jurisdiction in equity, upon the application of the public utilities commission or of any party interested, to enforce its orders or the orders, rules and regulations of said public utilities commission, and to restrain the use or occupation of the premises or such portion thereof as said commission may specify, on which said material is deposited or kept, or such other cause of pollution exists, until the orders, rules and regulations of said commission have been complied with.

Sec. 6. * * * The prohibition against the deposit of sewage, drainage, refuse, polluting matter and human excrement shall not apply to the following rivers, namely, the Penobscot, the Kennebec, the Androscoggin and the Saco.

According to Benjamin F. Cleaves, Executive Secretary of the Associated Industries of Maine, and former Chairman of the Public Utilities Commission of the state of Maine, the above quoted law of 1917, resulted from a realization that the previous law in Maine on the subject did not give those interested in the purity of domestic water supply a properly working law within the terms of which fair treat-

ment could be accorded such corporations, and protection given to those who must necessarily use as their source of supply, certain streams of water. Mr. Cleaves further says regarding the workings of the law enacted in 1917:

"Working within the law the Public Utilities Commission of the State of Maine has been able to prevent any considerable pollution, has shown cities and towns how to take care of their sewage matter other than by dumping it into the particular stream, has been able to convince some pulp and paper manufacturers and some lumbermen that they owed certain duties to the citizens of the State which they reasonably could perform and, without having to go to Court in a single instance, the commission has been able to clean up a number of bad spots and to administer the law in the interest of all.

"The reason why these several rivers were excepted was due to the fact, first, as already stated, the waters used from these rivers was either being purified or was not being used at all; and the pollution from mills and manufactories had been going on for so long a time and was of such a character that it was felt that it would endanger the passage of the law if these rivers were not exempted, and next that, as compared with the whole State, the use of the waters of these rivers was relatively inconsequential. We have some 1600 large lakes and ponds in our State, and there is hardly a community but what is within a reasonable distance of one of them. With Chapter 98 in force, and being reasonably administered, there is no probability of harmful pollution and so we have a very workable arrangement under which our mills and manufactories located mostly on the rivers named are not interfered with, and those relatively few industries which are located upon or near lakes and ponds which may be, or become, sources of supply for domestic use can be so regulated that no particular harm is done."

Maryland—Chapter 14 of the Acts of 1917 enacted in Maryland specifically prohibits the pollution of streams. In this state the legislation is mainly predicated on the theory of protection to fish life in the waters of the state. The language of the law is very general and prohibits "discharges from any house, building, trades establishment or manufacturing place, . . . deleterious to or destructive to fish or shellfish life" . . . and places authority over the same in the hands of the Conservation Commission of Maryland, which is empowered to enforce an abatement of the nuisance under the penalties of fines or imprisonment, or both.

Chapter 8 of the Acts of 1917, state of Maryland, also covered the pollution of streams which are the source of domestic water supply.

Section 279 of the general laws of Maryland also specifically provides penalties for the industrial pollution of streams.

Minnesota — Under the language of Chapter 400 of the session laws of Minnesota for 1919, (§ 87), the pollution of streams by deposit of industrial refuse is declared to be a public nuisance. The exact language of this section is as follows:

Sec. 87. Polluting streams,—No refuse, sawdust, shavings, tan bark, lime or other deleterious or poisonous substance shall be thrown or allowed to run into any of the waters of this state in quantities injurious to fish life inhabiting the same, or injurious to the propagation or fish therein. A continuous violation of this section is declared to be a public nuisance, and an action may be brought by the Attorney General on the request of the commissioner to enjoin and abate such nuisance.

Chapter 4670 and 4671 respectively, of the general statutes of Minnesota enacted in 1913, deal with the general subject of pollution of streams which are the source of domestic water supply.

New Jersey—Chapter 229, laws of 1918 of the state of New Jersey dealing with the purity of the public supplies of potable waters of the state, specifically prohibit "factory, workshop, refuse or waste, . . . from being placed in or discharged into streams from which domestic supply of water is obtained." . . .

A more drastic legislative provision, however, was enacted by the 1921 legislature of New Jersey and is contained in Chapter 280 of the laws of the state for that year. Briefly, this law provides that factories, workshops or places for the

manufacture of materials or goods, established after the enactment of the law, within the watershed of streams above the point at which public supplies of potable water are taken, shall obtain from the Department of Health of the state of New Jersey a permit to locate or establish such factories, etc.

North Dakota—§ 9747 of the General Laws of North Dakota, first enacted in 1877, in brief and direct language, embraces the only legislation adopted by that state on the subject of pollution of streams. The section referred to reads as follows:

Section 9747. Every person who throws or deposits any gas, tar or refuse of any gas house or factory into any public waters, river or stream, or into any sewer or stream emptying into any such public waters, river or stream, is guilty of a misdemeanor.

Rhode Island—The Rhode Island legislature of 1920 enacted a measure entitled, "An Act to prohibit and regulate the pollution of waters of the state." Several minor amendments to this law were made by the 1921 legislature.

The Rhode Island law places complete and far-reaching jurisdiction in the hands of a state board of purification of waters, consisting of three members appointed by the governor. The board is authorized to enforce the previously enacted general laws of the state of Rhode Island for the protection of fisheries and, by means of orders, may devise, direct, control or compel certain methods and processes or sewage filtration which, in its judgment, will prevent the pollution of streams, and all persons in the state from whose premises or factories sewage or refuse may be discharged, are held under the terms of the Act, to strict regulation and accountability of the board.

Under § 1 of the law, the term "sewage" is defined as meaning and including "any human or animal excremental liquid or substance, . . . chemicals, acid, dye-stuff, starch, coloring matter, all oil and tar, . . . which may be injurious to public health or comfort, or which would injuriously affect . . . fish or shell-fish in the waters of this state."

Tennessee—§§ 6754, 6755, and 6756 of the General Code of Tennessee, adopted in 1873, embrace that state's legislative enactment on the subject of industrial pollution of streams. The language of the statute is particularly specific as relates to certain industries, and brief in form. We quote the germane portion below:

Misdemeanor to Pollute Certain Streams.—It shall be a high misdemeanor for any person or persons to prosecute or carry on any business, or to erect or construct any slaughterhouse, hide house, boneyard, tanyard, or soap factory, or to deposit any injurious matter, thing, or substance, or to do any other act or thing, in such manner, or at such a place, as to injure or pollute the water of any stream from which water is taken by means of water-works to supply any town or city in this state.

Texas—Articles 695, 695a and 695b of the Penal Code of the state of Texas, enacted in 1915, covers the general subject and specific legislation relating to the pollution of water courses. The important section of the Texas laws on the question are given below:

Section 1.—That it shall be unlawful for any person, firm or corporation, private or municipal, to pollute any water course or other public body of water, from which water is taken for uses of farm, live stock, drinking and domestic purposes in the State of Texas, by the discharge, directly or indirectly, of any sewage or unclean water or unclean or polluting matter or thing therein, or in such proximity thereto as that it will probably reach and pollute the waters of such water course or other public body of water from which water is taken, for the uses of farm live stock, drinking and domestic purposes; provided, however, that the provision of this bill shall not affect any municipal corporation situated on tide water; that is to say, where the tide ebbs and flows in such water course. A violation of this provision shall be punished by a fine not less than one hundred dollars and not more than one thousand dollars. When the offense shall have been committed by a firm, partnership or association, each member thereof who has knowledge of the commission of such offense shall be held guilty. When committed by a private

corporation, the officers and members of the Board of Directors, having knowledge of the commission of such offense, shall each be deemed guilty; and when by a municipal corporation, the mayor and each member of the Board of Aldermen or Commission, having knowledge of the commission of such offense, as the case may be, shall be held guilty as representatives of the municipality; and each person so indicated as above shall be subject to the punishment provided hereinbefore; provided, however, that the payment of the fine by one of the persons so named shall be a satisfaction of the penalty as against his associates for the offense for which he may have been convicted; provided, the provisions of this act shall not apply to any place or premises located without the limits of an incorporated town or city, nor to manufacturing plants whose affluents contain no organic matter that will putrefy or any poisonous compounds, or any bacteria dangerous to public health or destructive of any fish-life of streams or other public bodies of water. . . .

Vermont—Legislation in Vermont specifically refers to owners or operators of mills who permit discharges of industrial refuse in the waters of any stream in the State. This matter is covered in § 6986 of the General Laws of Vermont, enacted in 1912. It is worthy of note, however, in connection with the Vermont law that no mention is made of the deposit of any substance deleterious to fish life. The language is broad, the exact text being as follows:

Sec. 6986. Deposit in streams; penalty. The owner or operator of a mill who, by himself or agent, deposits or suffers to be deposited edgings or slabs in the waters of any stream, shall be fined not more than one hundred dollars nor less than twenty-five dollars for each offense. The owner or operator of a water, steam, gasoline or electrical power mill which is erected, constructed or set up after August first, nineteen hundred and thirteen, who by himself or agent deposits or suffers to be deposited, sawdust, shavings, bark, or mill refuse in the waters of any stream shall be fined not more than one hundred dollars nor less than twenty-five dollars for each offense. The provisions of this section shall not take away or affect any right or remedy of law giving a person the right of recovery for or the protection against damages to his property rights by reasons of sawdust, shavings or other refuse being put or negligently allowed to run into a stream, by another.

Washington—§§ 2542, and 5150 (1 to 82) of the General Laws of the state of Washington, respectively, covering the various legislative phases of pollution of streams in that state. While the laws specifically refer to industrial refuse, it is worthy of note that provision is made exempting depositing of coal mine waste or drainage in any waters. These laws were enacted in 1909 and 1915, respectively, with amendments to the section 5150 having been enacted in 1917 and 1921.

West Virginia—In 1915 the West Virginia Legislature enacted a measure amending the statutes enacted in 1913, relating to game and fish, by making it specifically unlawful "for any person, firm or corporation to throw, discharge, or cause to enter into any stream, . . . sawdust, or other matter deleterious to the propagation of fish." Recognizing the practical limitations for drainage possessed by the vast coal mining properties in the state, the legislature specifically permitted the drainage into any stream, of the water that naturally collects in coal mines and the water from any coal washery.

The legislature of 1921 adopted a measure, amendatory to the 1915 statute only insofar as it applied to penalties for violations and prosecutions, and also creating a game and fish commission for the state, which now has charge of the enforcement of the law.

Wisconsin—Chapter 447, of the laws of 1919, of the state of Wisconsin, contain general and specific reference to industrial pollution of streams. To a considerable extent, the Wisconsin legislation of 1919 is similar in scope and general purpose to that adopted in Rhode Island in 1920 and in New Jersey in 1921. It vests authority with the State Board of Health to control, direct or compel certain methods, processes and facilities for filtration and disposal of sewage or refuse and defines refuse as

"sewage produced from industrial or community life, subject to decomposition."

A pamphlet prepared by the State Conservation Commission of Wisconsin, which is vested with direct authority over pollution of waters of the state, rules and declares to be illegal deposits of "deleterious substances." The language of the law under the jurisdiction of the Conservation Commission, is as follows:

"Deleterious substances. No person shall cast, deposit, or throw overboard from any boat, vessel or other craft into any waters within the jurisdiction of the state, or deposit or leave upon the ice thereof until it melts, any fish offal; or throw or deposit, or permit to be thrown or deposited, into any waters within the jurisdiction of the state any lime, tanbark, ship ballast, stone, sand slabs, decayed wood, sawdust, sawmill refuse, planing mill shavings, or any acids or chemicals or waste or refuse arising from the manufacture of any article of commerce, or any other substance deleterious to fish life other than authorized drainage and sewage from municipalities."

MICHEAL J. HICKEY,
NOEL SARGENT.

New York, N. Y.

INSURANCE—AUTOMOBILE LIABILITY.

MESSERSMITH v. AMERICAN FIDELITY CO.

133 N. E. 432.

Court of Appeals of New York. Nov. 22, 1921.

In view of Insurance Law, § 70, subds. 3, 9-11, public policy does not forbid enforcement of policy indemnifying automobile owner against liability for injuries accidentally suffered by any one through the maintenance or the use of his automobile, though the automobile, at the time the liability was incurred, was with owner's knowledge and at his direction driven by an infant under the age of 18, not accompanied by the owner or duly licensed chauffeur, in violation of Highway Law, § 282, subd. 2; the liability not being a product of "willfulness," as distinguished from liabilities for injuries from accident or negligence, covered by the policy, since the owner, in intrusting car to minor, did not desire or intend that there should be an injury.

CARDOZO, J. Plaintiff sues upon defendant's policy of insurance, indemnifying him against liability for injuries accidentally suffered by any one through the maintenance or use of his automobile. The defense is that in violation of Highway Law (Consol. Laws, c. 25) § 282, subd. 2, the automobile was driven by an infant under the age of 18, who was not accompanied either by the owner or by a duly licensed chauffeur; that this was done with the plaintiff's knowledge and under his directions; and "that the accident was directly caused by the improper and negligent conduct of the said infant," while thus violating the law. The question is whether indemnity in such circumstances is consistent with public policy.

The public policy of this state, when the legislature acts, is what the legislature says that it shall be. Demarest v. Flack, 128 N. Y. 205, 28 N. E. 645, 13 L. R. A. 854; Lancaster v. Amsterdam Impr. Co., 140 N. Y. 576, 583, 35 N. E. 964, 24 L. R. A. 322; Janson v. Driefontein Mines (1902), A. C. 484; Anson on Contracts (Corbin's Ed.), p. 286. The legislature has said in so many words that insurance companies may indemnify against liability for loss and damage through the use and maintenance of automobiles. Insurance Law (Consol. Laws, c. 28), § 70, subds. 3, 9-11. To restrict insurance to cases where liability is incurred without fault of the insured would reduce indemnity to a shadow. Neither in the statute nor is its application as shaped by long-continued practice is there the token of an intention that indemnity shall be withheld from owners operating their own cars, and limited to those whose cars are run by servants. Liability of the owner, who is also the operator, can never be incurred without fault that is personal. Indeed, the statute has so covered the field that it can seldom, if ever, be incurred without fault that is also crime. It is a misdemeanor (Highway Law [Consol. Laws, c. 25] § 290) to drive without adequate brakes and horns and lamps (Highway Law, § 286, subd. 1); to fail in stated situations to stop on signal (§ 286, subd. 2); to violate the rules of the road by not keeping to the right (§ 286, subd. 3); to drive in a careless and imprudent manner or at a dangerous or prohibited rate of speed (§ 287). Cf. Penal Law, § 1052 (Consol. Laws, c. 40). The General Highway Traffic Law (Consol. Laws, c. 70) contains directions even more minute, with the threat of penal consequences. What is true of insurance for the benefit of owners of automobiles is true also of insurance for the benefit of employers of labor. Westinghouse, C. K. & Co. v. L. I. R. R. Co., 160 App. Div. 200, 203, 145 N. Y. Supp. 201, affirmed 216 N. Y. 697, 110 N. E. 1051. Every violation of the Labor Law (Consol. Laws, c. 31) is today a misdemeanor. Penal Law, §

1275; People ex rel. Price v. Sheffield Farms-S.-D. Co., 225 N. Y. 25, 29, 121 N. E. 474.

In too many ways to be misread the state, through its legislature, has manifested recognition and approval of the business of insurance against the consequences of negligence, whether personal or vicarious. Even without the aid of legislation, courts of high authority have reached a like conclusion. Boston & Albany Co. v. Merc. Trust Co. (Am. Casualty Ins. Co.'s case), 82 Md. 535, 34 Atl. 778, 38 L. R. A. 97; Trenton Pass. Ry. Co. v. Guarantor's Liability Ind. Co., 60 N. J. Law, 246, 37 Atl. 609, 44 L. R. A. 213; Gould v. Brock, 221 Pa. 38, 69 Atl. 1122; Phoenix Ins. Co. v. Erie & W. Transp. Co., 117 U. S. 312, 6 Sup. Ct. 750, 29 L Ed. 873. Insurance, instead of prejudicing the victim of an accident, is seen to supply in many cases the only fund from which the victim can be paid. Boston & Albany Co. v. Merc. Trust Co., supra, 82 Md. 577, 578, 34 Atl. 778, 38 L. R. A. 97; Phoenix Ins. Co. v. Erie & W. Transp. Co., supra, at page 324, 6 Sup. Ct. 750, 29 L. Ed. 873. Courts are slow to substitute their own varying views of policy for those which have found embodiment in settled institutions, in every-day beliefs and practices, which have taken root and flourished. Janson v. Driefontein Mines, supra, at page 496. The field of discretion is still narrower when there has been statutory sanction, tacit, if not express, of callings and forms of conduct which it would have been easy to condemn.

The defendant does not greatly dispute that there may be indemnity against the consequences of negligence. It argues, however, that in this case the plaintiff's liability was the product, not of negligence, but of willfulness. Undoubtedly the policy is to be confined to liability for injuries that may be described as accidental. Even if its terms did not so limit it, the fundamental principle that no one shall be permitted to take advantage of his own wrong would import the limitation. But the extension of the policy to this case is no departure from its restriction to injuries that are the product of accident or negligence. The plaintiff, in intrusting his car to a youth under 18, did not desire or intend that there should be an injury to travelers. The act of so intrusting it was willful, but not the ensuing conduct of the custodian, through which injury resulted. Indeed, the violation of the statute would have been the same, though the driver's age had been unknown. What was willful was not actionable, except as it became so in the sequel, through what was unintended or fortuitous.

Injuries are accidental or the opposite, for the purpose of indemnity, according to the quality of the results rather than the quality of the causes. The field of exclusion would be indefinitely expanded, if the defendant's argument were pursued to the limit of its logic. Every act, if we exclude, as we must, gestures or movements that are automatic or instinctive, is willful, when viewed in isolation and irrespective of its consequences. An act *ex vi termini* imports the exercise of volition. Holland, Jurisprudence (8th Ed.), pp. 93, 94. Even so, if the untoward consequences are not adverted to—at all events, if the failures to advert to them is not reckless and wanton (cf. Penal Law, § 1044, subd. 2)—liability for the consequences may be a liability for negligence (Holland, supra, pp. 97, 98; 2 Austin, Lectures, p. 103; Salmond, Jurisprudence, pp. 351, 363; Martin v. Herzog, 228 N. Y. 164, 168, 126 N. E. 814). Cf. 1 Street, Foundations of Legal Liability, 80; Holmes, Common Law, pp. 103, 105. A driver turns for a moment to the wrong side of the road, in the belief that the path is clear and deviation safe. The act of deviation is willful, but not the collision supervening. The occupant of a dwelling leaves a flower pot upon the window sill, and the pot, dislodged by wind, falls upon a passing wayfarer. N. Y. City Ordinances, § 250. The position of the flower pot is intended, but not the ensuing impact. The character of the liability is not to be determined by analyzing the constituent acts, which, in combination, make up the transaction, and viewing them distributively. It is determined by the quality and purpose of the transaction as a whole.

We conclude that public policy does not forbid the enforcement of the contract. Brock v. Travelers' Ins. Co., 88 Conn. 308, 313, 91 Atl. 279; Ford v. Stevens Motor Car Co., 203 Mo. App. 669, 220 S. W. 980; Tinline v. White Cross Ins. Co., 151 L. T. Jour. 434.

The order should be affirmed, with costs. Order affirmed.

NOTE—*Validity of Automobile Liability Insurance.*—"Undoubtedly a contract indemnifying another against consequences arising from willful violations of a statute, or from the commission of crime generally, committed by the assured himself, is void for the reason given, but one may lawfully insure another against the consequences of such acts committed by his servants and employees, if such acts are not directed by or participated in by the assured." Taxicab Motor Co. v. Pacific Coast Cas Co., 73 Wash. 631, 132 Pac. 393.

"There was a time when all insurance, and especially of life, was looked upon with suspicion and disfavor, but it was only because regarded as a species of wagering contract. That time has long gone by. And with the intelligent study

of political economy bringing the recognition of the fact that even the most apparently disconnected and sporadic occurrences are subject to at least an approximate law of averages, the insurance against loss from any such occurrence has been recognized as a legitimate subject of protection to the individual by a guaranty of indemnity from some party undertaking to distribute and divide the loss among a number of others for a premium giving them a prospect of profit." Gould v. Brock, 221 Pa. St. 38, 69 Atl. 1122.

A legal contract of insurance is not made void by an incidental violation of the highway law. Messersmith v. American Fidelity Co., 187 App. Div. 35, 175 N. Y. Supp. 169 rev'g 101 Misc. 598, 167 N. Y Supp 579.

"*If it is contended* that sound, undeclared public policy demands a denial of such policies of insurance, we cannot agree to the proposition." American Fidelity Co. v. Bleakley, 157 Ia. 442, 138 N. W. 508.

ITEMS OF PROFESSIONAL INTERESTS.

RECENT DECISION BY THE NEW YORK COUNTY LAWYERS' ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

SPECIAL QUESTION.

Relations of Lawyers and Lawful Trade Organizations and Other Organizations. — This committee appointed a sub-committee to co-operate with a similar sub-committee of the Committee on Unlawful Practice of the Law to consider the relations of lawyers and lawful trade organizations.

The joint sub-committees held a series of hearings and conferences with those especially interested in the subject. The two committees then held joint conferences. After prolonged consideration of the subject and of the cognate subject of the relations of lawyers and collection agencies, this committee has reached its conclusions as follows:

The committee is of the opinion that it should confine itself to the consideration of the propriety of the conduct of the lawyer or of the relation of the lawyer to the organization and the relation of the organization to the lawyer. The committee does not assume to construe existing statute law.

In its opinion (independent of any prohibition imposed by statute) there is no inherent impropriety, professional or otherwise, in the establishment and maintenance of the following relations between a lawyer and a trade organization existing for the benefit of its members:

(1) A lawyer may without professional impropriety, accept employment and compensation from such Association, acting as agent for a member, to render professional services in behalf of such member (for example, in making collections or in connection with insolvencies or bankruptcies), though the Association has urged its members to refer to it matters involving their common interests, for representation or for such service, provided, however, that the lawyer be careful to avoid assuming inconsistent professional obligations. He should regard and treat the member as his client; and he should not compensate the Association nor divide his compensation with it. The committee assumes that the solicitation of such claims by the Association is for the common advantage of its members and not for the purpose of obtaining employment for the lawyer; if the latter were its purpose the committee would regard such solicitation as improper; in short, where the employment is an incident of the advantage to the members, the fact that the claims are solicited for the latter purpose, should not preclude the lawyer from accepting the employment, while, if the end in view is the solicitation of employment for the lawyer, he should not permit such solicitation in his behalf, nor accept the employment so solicited.

(2) A lawyer may without professional impropriety accept employment and compensation from such Association in its own behalf, to perform for it professional services in the promotion of its interests and the common interests of members; and in such employment may properly render the services, in the interest of the Association and of its members, of which the following are illustrations, though not exclusive of others of a similar nature: advice to the Association; representation of a group of creditors; filing of petitions on behalf of committees; acceptance of proxies; inter-communication between creditors; prosecution of fraud; investigation of fraud; advice to members where the interests of the Association are affected; appearance before legislative bodies in behalf of interests represented by the Association; preparation of settlement agreements; reorganization of business enterprises; co-operation with other bodies and associations.

The fact that the Association has organized creditors as a group, or has organized committees, or has secured proxies, or has in other ways promoted the activity of its members, is not, in the opinion of the committee such a solicitation of business for the lawyer as to preclude his acceptance of the employment; always provided, the solicitation is in the interest of the Association or its members; and that its object is not to solicit business for the lawyer under the disguise of the Association.

In such case also the lawyer should observe the same precautions above mentioned (under 1 above).

The committee is led to distinguish lawful trade organizations from collection agencies, in that trade organizations are a co-operative effort to unite the activities of those having a

common object, in which all are alike interested, and in which they are uniting through the Association in employing legal services for the common end. In the opinion of the committee the employment of a lawyer to promote this common interest as above indicated contains no element of inherent professional impropriety.

But, as usually conducted, a collection agency exists for its own profit, is an independent contractor, does not exist for co-operative purposes, and solicits business for its own ends, though it doubtless promotes the interest of its customers or it could not exist. When in behalf of a customer it acts as his agent and transmits a claim or employs a lawyer, such employment, in the interest or on behalf of its customer, is not, in the opinion of the committee inherently improper, provided it is free from divided allegiance or inconsistent obligation, and provided it is not permitted to deprive the lawyer of the untrammeled relation of fidelity to the customer, which is of the essence of professional duty. Since the interests of the collection agency, unlike those of the trade organization, are not identical with the interests of those whom it undertakes to represent, its solicitation of business is for its own ends; while it may properly employ a lawyer as its own adviser, and to represent it, in the opinion of the committee the employment by it in its own behalf, of a lawyer to represent its customers, is the exploitation of his services for its profit, as an intermediary between client and attorney; and this the committee has always regarded as not professionally proper (whether or not prohibited by statute); for the reason that the exploitation of the office of the lawyer for the profit of another is an abuse of its functions, the solicitation of business for the common advantage of the agency and the lawyer is solicitation for the lawyer, and the obligation to the agency should not be permitted to supersede or interfere with the primary obligation to its customer.

The same principles which apply to the conduct of the lawyer for the trade organization of course apply to the conduct of the lawyer for the collection agency.

Upon the same principles which apply to trade organizations, a lawyer, if not prohibited by statute may in the opinion of the committee, without professional impropriety accept employment and pay from associations of employees, or employers or any other body of persons having common or similar interests, organized and employing the lawyer for the promotion of such interests.

HUMOR OF THE LAW

A debtor declared in Shoreditch County Court he was doing nothing.

"Then," said the Judge, "how do you live?"

Debtor—Oh, I'm married!

A justice of the peace who had officiated at a marriage in his office a month previously, received the following note signed jointly by bride and groom:

"Dear Judge: You remember making us two man and wife four weeks ago? Well, everything seemed all right then. We each seemed just the right person for the other.

"But since then things have changed and reflection has convinced us that it must have been a case of mistaken identity. So if you will revoke our license on that ground you will greatly oblige

(Signed) John Howard,
Millie Howard."

"Rastus," said the judge sternly, "you are found guilty of having stolen two chickens from Mr. Robinson's coop last week. The fine will be five dollars."

Smiling complacently, Rastus approached the clerk of the court and laid a ten-dollar bill on the desk.

"Yassuh, jedge," he said, "so Ah gives you ten bucks which will pay you up to and includin' next' Sattidy night."

In a certain Western town there was at one time a justice of the peace who had been born in the Emerald Isle, and whose blunders occasioned many a smile to the better educated members of the cummunity.

At one time a supoena had been issued from his court to another Irishman to attend as witness in a case where John Smith was the plaintiff, and Henry Johnson et al. were the defendants.

Patrick Clancy, the desired witness, appeared in court before the trial commenced, and during an informal preliminary conversation he asked, bluntly:

"Judge, who in the world is 'et al.'?

"Well, well, Patrick," exclaimed his honor, in evident amazement. "I must say that I am a bit surprised that an American citizen and a man of ordinary intelligence should not know the meaning of et al.! But for the benefit of the witness and any other gentlemen present that might be as ignorant as Patrick Clancy, I will explain. It is derived from two Latin words and means, in its literal and American sense, at all, at all!"—*Washington Herald.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

Arkansas.....28, 53
Connecticut.....21, 49, 50, 54, 62
D. C......45
Georgia.....8, 20, 26, 52, 55, 59
Idaho.....17
Illinois.....29, 32, 40, 43, 46, 48, 60, 61, 64, 65
Iowa.....7, 10, 44
Louisiana.....23
Michigan.....9, 13, 57, 66
Minnesota.....30, 34, 38, 63
Missouri.....3, 11, 24, 31
Montana.....1, 27
New Mexico.....51
New York.....14, 15, 22, 25, 35, 37, 39, 56, 58
Oregon.....2, 41
Rhode Island.....36
Texas.....18, 33, 42, 47
United States C. C. A......5, 6, 16, 19
United States D. C......4, 12

1. **Automobiles**—Collision.—In an action for injuries to plaintiff's automobile in a collision with a taxicab, an instruction that the owners of the taxicab were liable for any negligent acts of their driver within his employment, whether done willfully or negligently or otherwise, was based on Laws 1915, subc. 8, c. 141, § 5, and was correct.—Rohan v. Sherman & Reed, Mont., 202 Pac. 749.

2.——Collision.—In an action for injuries to plaintiff, who was a passenger in an automobile driven by her husband, which collided with defendant's automobile at a street intersection, defendant was not entitled to an instruction on the last clear chance doctrine, where it was not shown by evidence or pleading that plaintiff was in any way authorized to control the car; the marital relationship not of itself being sufficient to impute to her any negligence of her husband.—Marshall v. Olson, Ore., 202 Pac. 736.

3.——Collision.—Plaintiff, who could have seen an approaching train at any time within 85 feet of the crossing which he was approaching on an up grade in an automobile, but who did not see it because he was looking constantly in the other direction, where view was obscured, and from which direction he expected a train, held negligent.—Hammack v. Payne, Mo., 235 S. W. 467.

4. **Bankruptcy** — Collateral Attack. — Where judgment was obtained against bankruptcy before bankruptcy proceedings on mortgage foreclosure, and the land was sold by trustee in bankruptcy, and mortgagee filed claim for unpaid portion of judgment, which he claimed constituted a lien on the proceeds in the hands of the trustee, the trustee, as a defense, could claim that such judgment had been paid, in that the mortgagee had sacrificed securities held by him, and had purchased them at an illegal sale for a nominal amount, and that to allow him a lien on the funds in the hands of the trustee would amount to payment twice of his debt.—In re Thompson, U. S. D. C., 276 Fed. 313.

5.——Concealment.—A bankrupt is not entitled to exemptions under the law of Michigan, where it is found that he has fraudulently concealed from his creditors property of greater value.—In re Shuman, U. S. C. C. A., 276 Fed. 292.

6.——Subscribers to Stock not Creditors.—Subscribers to the stock of a corporation have not the standing of creditors who may maintain an involuntary petition against it, merely on an allegation that their subscriptions were induced by fraud, in the absence of any adjudication that they are entitled to rescind their subscription contracts and recover the amounts paid thereon.—Missouri Valley Cattle Loan Co. v. Alexander, U. S. C. C. A., 276 Fed. 266.

7. **Banks and Banking** — Mortgage. — Where foreclosure was had of a mortgage on printing machinery, and a special execution was issued and levied upon the mortgaged property by deputy marshal, who placed the property in charge of a custodian, who took charge of the business and collected accounts pending sale, and deposited them in a bank in the name of the judgment debtor, the bank, as authorized in a note which it held of the debtor, could properly apply the deposits on the note, as neither the custodian nor the marshal nor the judgment plaintiff had any interest in the funds superior to that of the bank or judgment debtor.—Wilson v. Bulletin Pub. Co., Iowa, 185 N. W. 893.

8.——Stockholder's Liability.—While the liability of a stockholder in a national bank is statutory, it rests on the stockholder's subscription or on his receipt and acceptance of his stock and is contractual in its nature, at least in a qualified or limited sense.—Duncan v. Freeman, Ga., 110 S. E. 5.

9. **Benefit Societies**—Good Standing.—Where the articles of association of a mutual fire insurance company stated that its purposes were "for the mutual protection of its members who are members in good standing in" a grange "for the purpose of mutual insurance of their property against loss by fire," a by-law requiring every policy holder to keep his dues in the subordinate grange of which he is a member fully paid up, and providing that any policy holder who shall permit or allow his dues to remain unpaid for nine months voids his policy, was void, as conflicting with the articles of association.—Howe v. Patrons' Mutual Fire Ins. Co., Mich., 185 N. W. 864.

10. **Bills and Notes**—Holder in Due Course. —Intervener in action by maker for possession of note obtained by payee by fraud, claiming title by purchase and demanding a recovery on the note, is for all practical purposes the real plaintiff, with the burden, under Code Supp. 1913, § 3060a59, of proving it was a holder in due course.—Connelly v. Greenfield Sav. Bank, Iowa, 185 N. W. 887.

11.—Indorsement of Payee.—Where the name of the payee in trade acceptances was indorsed on the back of each with a rubber stamp, and no signature of any officer of the payee attached until after suit was filed against the makers by the payee's assignee, the subsequent placing on the indorsement of the signature of the payee's officer who sold the acceptances to plaintiff did not constitute fraud, where the transfer of title was clearly shown, and there was no evidence of fraud in connection therewith.—Metropolitan Discount Co. v. Wasson, Mo., 235 S. W. 465.

12.——Negotiability.—An extension agreement made by the payee of notes with a third person, recited in memorandum on back of each of the notes, did not affect their negotiability. —Hanssen v. Pusey & Jones Co., U. S. D. C., 276 Fed. 296.

13.——Notice of Dishonor.—The president of a corporation who had indorsed its notes, and who was the only one authorized to sign checks for the corporation, so that he would have knowledge whether the note had been paid, is liable as an indorser without notice of dishonor, under Negotiable Instruments Act, § 117, providing that such notice is not required where the indorser is the person to whom the instrument is presented for payment.—Whitney v. Chadsey, Mich., 185 N. W. 826.

14.——Notice of Protest.—The presumption of due diligence in the service of a notice of protest may be rebutted, although no affidavit was served, under Code Civ. Proc., § 923.—Schneitzer v. Kessler, N. Y., 191 N. Y. S. 199.

15. **Brokers**—Commission.—Where the officers of a corporation agreed to pay a broker a commission for selling property of the corporation, subject to the approval of the majority stockholder, failure of the broker to obtain approval of the majority stockholder prevents a

meeting of the minds as to the payment of the commission, and precludes the broker from collecting it.—Diamond Cattle Co. v. Stevick, N. Y., 191 N. Y. S. 236.

16. **Carriers of Goods** — Possession. — Cotton owned by plaintiff, which was destroyed by fire after it had been loaded by a compress company, at plaintiff's request, in cars of defendant railroad company, where the loading certificate issued by the compress company was held by plaintiffs, who had given no shipping directions to defendant and had made no application for a bill of lading, held not in possession of defendant as carrier, and defendant held not liable as a carrier for the loss.—Harris, Cortner & Co. v. Louisville & N. R. Co., U. S. C. C. A., 276 Fed. 277.

17. **Carriers of Live Stock**—Safe Stockyards. —The question as to whether stockyards provided by a railroad company are reasonably secure for sheep should be determined in view of the well-known fact that every city and village contain dogs, some of which are likely to attack sheep in pens if opportunity is afforded. —Houchtelin v. Oregon Short Line R. Co., Idaho, 202 Pac. 571.

18. **Carriers of Passengers**—Alighting.—A passenger may remain such in getting off the train at an intermediate station, so long as his object is not inconsistent with his character as a passenger, and such right does not depend on notice having been given to the conductor that he desired to alight.—Fort Worth & D. C. Ry. Co. v. Hawley, Tex., 235 S. W. 659.

19. **Corporations**—Dissolution.—Under General Corporation Laws Del. § 40, providing that corporations expiring by limitation or otherwise dissolved shall be continued for the term of three years for the purpose of closing and settling their business, conveying property, and prosecuting and defending suits, a Delaware corporation dissolved under the statute for nonpayment of taxes held to have the power within three years thereafter to redeem real property from execution sale under the laws of California.—Big Sespe Oil Co. v. Cochran, U. S. C. C. A., 276 Fed. 216.

20.——Place of Bringing Suit.—"A private business corporation created under the laws of this state, with its principal office in a given county, cannot be sued in another county for a trespass committed therein, when it has no agent, agency, or place of business in the latter county."—Ellis v. Southern Express Co., Ga., 110 S. E. 43.

21. **Deeds**—Lis Pendens.—In a suit to compel the erasure of an undelivered deed from the records, where plaintiff on cross-examination testified that he had told tradesmen to send their bills to defendant as she owned the property, but on redirect stated that on learning of the recording of the deed he had recorded a lis pendens, held, that the recording was an act indicative of plaintiff's intention, and the fact that it contained declarations in support of plaintiff's claim did not make the act and instrument inadmissible.—McDermott v. McDermott, Conn., 115 Atl. 638.

22. **Easements**—Wife's Consent.—Where husband and wife were both present at the grant of an easement for which he received a consideration, and grantee proceeded to construct and maintain the easement, husband was estopped to deny that the wife did not consent to the grant.—Singleton v. M'Gurk, N. Y., 191 N. Y. S. 232.

23. **Elections**—Bona Fide Resident.—Primary election candidate who had sold his permanent residence in New Orleans while living in summer home in other state, and whose only residence in precinct of other ward during the six months preceding election was a hotel where he lived only occasionally and where he registered and was assigned a room whenever he returned and where he paid for the use of the room only during the time that he actually occupied it, held ineligible, not being an "actual bona fide resident" of such precinct during such six months.—Hall v. Godchaux, La., 90 So. 145.

24. **Electricity**—Rates.—The Public Service Commission has the power to fix reasonable rates for public service companies furnishing electricity, etc., subject to court review as to reasonableness, and this power the Commission has, by delegation from the Legislature in the exercise of the police power, notwithstanding contracts and ordinances.—Bertha A. Mining Co. v. Empire Dist. Electric Co., Mo., 235 S. W. 508.

25. **Husband and Wife**—Necessaries.—Plaintiff wife could not obtain reimbursement for her expenditures for necessaries made while her separation agreement was in full force and effect, and her husband was paying her, as agreed therein, a stipulated sum per month for her maintenance.—Ashmead v. Sullivan, N. Y., 191 N. Y. S. 205.

26. **Innkeepers**—Degree of Care.—The lessee of a building in which he conducts a hotel and operates an elevator for the transportation of his guests to and from different floors of the building is required, in the operation of the elevator for this purpose, to exercise extraordinary diligence for the safety of the guests while they are getting on and off and while riding upon the elevator. This rule of diligence is not limited to the actual technical operation of the machine, but includes such examination, inspection, and repair of its physical and mechanical parts as is necessary to keep and maintain it in a fit and proper condition for safe operation.—Bullard v. Rolader, Ga., 110 S. E. 16.

27. **Insurance** — Bank as Broker. — As respects liability for failure to procure insurance a bank which was in position to accept and receive applications for hail insurance in several companies, and which selected the company to which the application should be made in the absence of selection by the applicant, was an insurance broker who is one acting as middleman between the insured and the insurer under no employment from any special company, and who in a sense acts as the agent of both parties to the transaction.—Gay v. Lavina State Bank, Mont., 202 Pac. 753.

28.——"Constructive Delivery." — Mailing of policy by insurer to agent for delivery to assured constituted constructive delivery to assured, and made policy effective without actual delivery if policy was mailed to agent unconditionally for the sole purpose of delivery to assured, but did not constitute delivery if policy was mailed to agent for the performance of specific duties in making delivery of policy.—New York Life Ins. Co. v. Mason, Ark., 235 S. W. 422.

29.——Employers' Indemnity Policy.—In employer's indemnity policy, a provision that the persons covered shall be those upon whose remuneration as employees the premium shall be computed does not limit the policy to cover only those persons shown by the audited pay roll, etc., furnished by insured to insurer to determine the initial premium payment, as the total premium is not ascertainable until the end of the policy year.—Amalgamated Roofing Co. v. Travelers' Ins. Co., Ill., 133 N. E. 259.

30.——Good Health.—A policy of health insurance giving indemnity for disability resulting from a "disease which shall originate and begin after this policy shall have been in continuous force for 30 days" covers a disease first manifesting itself after such time, although the medical cause antedated it.—Cohen v. North American Life & Casualty Co., Minn., 85 N. W. 939.

31.——"No Action Clause."—Where an employers' liability policy contains a clause providing that no action shall lie against the insurance company until the insured has paid the judgment against it, such clause is valid, and will be upheld; the injustice being for the Legislature or the forethought of insured to remedy.—Skaggs v. Gotham Min. & Mill. Co., Mo., 235 S. W. 511.

32.——Statutory Duty.—An agent of foreign insurance companies doing business within the state can be compelled by mandamus to make the return of the amount of net receipts of his agents required by Hurd's St. 1917, p. 1701, § 30; the making of such return being a duty imposed on the corporation as a condition to the right to do business within the state under section 22.—People v. Kent, Ill., 133 N. E. 276.

33.——Theft.—Under Pen. Code 1911, art. 1348, defining theft by a bailee where automobile dealers permitted a prospective purchaser to take an automobile in order that he might learn how to drive it pending the collection of

his check for the price or the receipt of information by them that it was good, his appropriation of the automobile amounted to "theft" within a policy insuring the dealers against theft.—Security Ins. Co. v. Sellers-Sammons-Signor Motor Co., Tex., 235 S. W. 617.

34. **Insurrection and Sedition** — Criminal Syndicalism Act.—An article in a newspaper stating among other things that capital will never submit without the bloodiest battle history has ever known and that the workers must learn to fight until the capitalist class is overthrown and rests blood-stained at the feet of the labor giant, advocates violence as a means of accomplishing industrial ends and is a crime under said statute.—State v. Worker's Socialist Pub. Co., Minn., 185 N. W. 931.

35. **Landlord and Tenant**—Holding Over.—Where a life tenant died during a lease of the premises, the acceptance of rent by the remaindermen was a consent to the tenant holding over, and changed his status from that of a trespasser, according to Code Cov. Proc. § 1664, to a tenant at sufferance.—Tunick v. Federal Food Stores, N. Y., 191 N. Y. S. 174.

36.——Holding Over.—A landlord who elected to sue a tenant holding over after expiration of his term in assumpsit for use and occupation cannot discontinue such action and proceed with a second action in trespass, the commencement of the proceeding being a conclusive election.—Arnold Realty Co. v. William K. Toole Co., R. I., 115 Atl. 565.

37.——Unreasonableness of Rent.—Laws 1920, c. 944, providing that, in an action to recover rent, the fact that the rent sued for is greater than it was one year prior to the time the agreement for rent was made, renders the agreement presumptively unjust, unreasonable, and oppressive, is rendered applicable to summary proceedings by Code Civ. Proc. § 2244, providing that in such a proceeding a defense or counterclaim may be set up and established in like manner as though the claim for rent was the subject of an action.—Kornblum v. Schell, N. Y., 191 N. Y. S. 188.

38. **Libel and Slander**—Admissible Evidence.—Under a general denial in his answer in a slander case, defendant may introduce evidence to prove plaintiff's bad reputation at and prior to the time of the alleged slander and defendant's good faith and the absence of malice, but he may not introduce evidence to establish the truth of the matter charged as defamatory.—Nett v. Bonfig, Minn., 185 N. W. 956.

39.——Sufficiency of Complaint.—Complaint, alleging that defendant said to plaintiff, "I know all about you, and Mr. B. and E. can tell me more," that plaintiff was a married woman, not related to Mr. B., and that defendant, in uttering the words, intended to charge plaintiff with being unchaste, held insufficient to state a cause of action for slander, without the allegation of facts, by way of inducement or colloquium, showing that the uttered words had the claimed meaning, since the quoted words do not, as commonly understood, charge plaintiff with being unchaste.—Moore v. Levy, N. Y., 191 N. Y. S. 165.

40. **Licenses** — Advertising Matter. — A city ordinance prohibiting the distribution of advertising matter without a license, to procure which the applicant must furnish bond, with surety to be approved by the city clerk, but providing that no license should be required for the purpose of advertising home entertainments or sales by citizens of the city, if the person desiring the same should first obtain a permit from the mayor, held void, as being discriminatory against nonresidents.—City of Elgin v. Winchester, Ill., 133 N. E. 205.

41.—Blue Sky Law.—Or. L. §§ 6838, 6848, held not to apply to purchase of stock of a farmer elevator company from the company by citizens of a community to induce it to construct an elevator at that place, where the trial court found that the stock was not sold for profit nor on commission, nor was the stock offered to the public, as the statute cannot be enlarged by construction, in view of section 799, subds. 1, 34, and section 2409.—Kirk v. Farmers' Union Grain Agency, Ore., 202 Pac. 731.

42.——Motor Vehicles.—A city ordinance, prohibiting operation of motor vehicles for hire without procuring license from the city, held not so unreasonable on its face or unnecessary for the protection of life and property as to overcome the presumption of reasonableness.—City of Graham v. Seal, Tex., 235 S. W. 669.

43.——Securities Law.—The provision of Illinois Securities Law 1919 requiring the issuer of class D securities, consisting of those not entitled to be placed in any other class, to file statements containing the statement that the securities are speculative, and to make the same statement in every circular or prospectus, is not invalid, as it was for the Legislature to determine the means to be adopted to accomplish its purpose; securities being "speculative" when the investment in them involves some risk of loss, perhaps greater than the ordinary investment.—Stewart v. Brady, Ill., 133 N. E. 310.

44. **Master and Servant**—Course of Employment.—Where hotel chambermaid, using an alcohol lamp, on retiring for the night in her room, to heat her hair curling iron, contrary to the hotel rules, finished curling her hair, and on returning to her room after a moment's absence, found the flame had started a fire on her dresser, which she extinguished, thereby setting fire to her clothing, the burns suffered thereby were compensable, as injuries "arising out of and in the course of employment."—Kraft v. West Hotel Co., Iowa, 185 N. W. 895.

45.——Negligence of Servant.—A terminal company subject to Employers' Liability Act, § 1, whose rules required a signal foreman's helder to keep a lookout while the foreman was at work on a switch and to warn him, and also requiring the engineer and fireman to keep a lookout for men working on the tracks and to stop the train if they failed to get out of the way, is liable to the administratrix of a signal foreman who was killed because of the negligence of his helper and the engine crew.—Washington Terminal Co. v. Callahan, D. C., 276 Fed. 334.

46. **Municipal Corporations** — Building Permit.—If, as alleged in a bill to enjoin a city and its mayor from enforcing a building ordinance requiring the obtaining of a permit which the mayor had refused to grant and from interfering with the erection of a building, complainant had complied with the ordinance and there were no binding rules or regulations which it had not complied with, and plans and specifications had been requested which had not been furnished, it had a complete and adequate remedy at law by mandamus to compel the issuance of the permit, and equity would not interfere.—Grace Missionary Church v. City of Zion, Ill., 133 N. E. 268.

47.——"Residence District." — An ordinance which prohibits the construction of a business house within a "residence district," defined as a district having more dwelling houses than business houses, within a radius of 300 feet from the place where a business house is sought to be constructed without the consent of three-fourths of the property owners of the district and the approval of the building inspector, held void, not being a proper exercise of the police power.—Spann v. City of Dallas, Tex., 235 S. W. 513.

48.——Speed of Vehicles. — An ordinance of the West Chicago Park Commissioners requiring all vehicles to come to a full stop before crossing any boulevard in the control of such commissioners, at any place where it intersects any street held clearly not one for regulation of traffic, the amount or character of traffic on the boulevard not being taken into consideration, but one for regulation of speed and to insure observance of the further requirement that no vehicle shall cross the boulevard at a greater speed than 6 miles per hour, and so void under Motor Vehicle Law, § 12, as amended by Laws 1915, p. 592.—Elie v. Adams Express Co., Ill., 133 N. E. 243.

49. **Partnership** — Good Will. — Where, by order of the court, a partnership receiver did not include the good will among assets sold to one of the partners, the other partner being left free to solicit for himself the business of former customers of the farm, had a right to make and use a list of such customers; such right being included in the good will.—Chamberlain v. Hemingway, Conn., 115 Atl. 632.

50. **Payment**—Duress.—Debtor who paid disputed claim for amount in excess of that ac-

tually due in order to avoid attachment of its property and the closing down of its factory could not recover the excess amount on the theory that it was paid under duress, in the absence of a showing that the creditor acted in bad faith, or that the officer threatened to shut debtor's entire plant, since, as between private suitors who stand on an equal footing, the due process of the law invoked in good faith and fairly used cannot amount to duress. —Remington Arms Union Metallic Cartridge Co. v. Feeney Tool Co., Conn., 115 Atl. 629.

51. **Principal and Agent**—Proof of Agency. —The admissions statements, and declarations of an agent are not admissible to prove agency. There must be prima facie proof of agency before such declarations or statements are admissible for any purpose; but the fact of agency, when it rests in parol, may be established on the trial by the testimony of the agent himself.—State v. Kelly, N. M., 202 Pac. 524.

52. **Railroads** — Invitee. — Where the plaintiff's husband, at the time of his homicide, was riding, by the invitation, express or implied, of the conductor, on the top of a freight car, which was manifestly not intended to be used for the transportation of passengers, which fact was known, or by the exercise of reasonable diligence would have been known, to the decedent, no right of action would result, in the absence of evidence tending to show willful and wanton injury.—Ocilla Southern R. Co., v. Faircloth, Ga., 110 S. E. 46.

53.——Signals.—Failure to give proper signals by bell and whistle was not the proximate cause of death of a deaf person struck by a train which he knew was approaching crossing. —Davis v. Scott, Ark., 235 S. W. 407.

54. **Sales**—Impairment of Credit.—A sale contract for the delivery of coal in monthly installments, giving the seller the right to require payments in advance of deliveries, "if credit of the buyer shall at any time, in the judgment of the seller, become impaired," did not give the seller the right to require all payments past due to be made before it should make further deliveries, but merely gave it the right to refuse further deliveries unless advance payments were made when it should fairly determine that the buyer's credit had become impaired.— Spring Coal Co. v. Quemahoning Coal Co., Conn., 115 Atl. 635.

55.——Implied Warranty.—The intended use of articles of jewelry, to be used for wearing apparel, is not for purposes of utility alone, but is partly ornamental; and where such goods are sold under a contract of sale with an implied warranty that the goods are reasonably suited to the use intended, and they are purchased for the purpose of resale, which latter fact is known to the seller, the fact that the goods become tarnished and lost their original brilliant appearance after delivery to the purchaser might be such as to impair the intended use of the articles and thereby amount to a breach of the implied warranty.—Bentley v. Rice, Ga., 110 S. E. 26.

56.——Rescission. — Where defendant, buyer of a warranted machine, notified plaintiff seller, after plaintiff's unsuccessful attempts to correct defects in the machine, that plaintiff could take out the machine, such offer to return did not constitute a recission, where thereafter defendant did not, for some time, discontinue the operation of the machine, and ceased such operation only when it ceased to operate its whole plant.—Gordon Dryer Co. v. Staler Chemical Co., N. Y., 191 N. Y. S. 201.

57. **Street Railways** — Speed. — An ordinance of a city limiting the speed of single truck street cars to 12 miles an hour, while permitting double track cars to run 15 miles an hour, is one passed in the exercise of the police power, and it cannot be said that the city exceeded its power to classify the cars by permitting those equipped with double trucks to run faster.—Beaubien v. Detroit United Ry., Mich., 185 N. W. 855.

58. **Taxation**—Mobilia Sequuntur Personam. —Where personal property of deceased resident of Colorado was distributed in New York to persons in New York, the transfer tax assessed by the state of Colorado cannot be collected from beneficiaries on the theory that legal situs of the property attached to decedent's domicile in Colorado, and that such state had an enforceable lien thereon by virtue of taxing order, since the judgment in such suit imposes a personal liability only, and enforces no lien, and since the rule of mobilia sequuntur personam is not an exclusive rule of universal application, and does not transfer property into the foreign from the domestic jurisdiction.— State of Colorado v. Harbeck, N. Y., 133 N. E. 357.

59. **Vendor and Purchaser**—Recission.—The vendor and the vendee in an executory contract of sale cannot by a new and distinct contract of recission convert their relationship into that of landlord and tenant so as to affect the intervening rights of a third person. But this intervening right must be that of an innocent third person without notice when entering into his contract that the original executory contract of sale has been rescinded, and the relation of landlord and tenant created.— Manley v. Underwood, Ga., 110 S. E. 49.

60. **Wills**—Ambulatory Disposition. — An intended disposition of property by deed which is not to take effect in grantor's lifetime, but is ambulatory, chargeable until the death of grantor, is inoperative unless executed in writing in conformity with the statute of wills, but a deed signed, sealed, and delivered becomes at once binding and effective, and is irrevocable and unchangeable, even through a future estate is created, such instrument not being testamentary in character.—Heiligenstein v. Schlotterbeck, Ill., 133 N. E. 188.

61.——Gift to Children.—Where testator made a devise of rents and proceeds of land to be collected by the executors and on the death of the life tenant the rents and profits were to be divided among testator's surviving children and wife without making final disposition of the fee, a provision that when all his children are dead the executors sell all property belonging to his estate and divide the proceeds equally among the surviving heirs of his children will be construed to relate to the fee and to prevent its vesting in the surviving heirs of the testator.—Churchill v. Marr, Ill., 133 N. E. 335.

62.——"Next of Kin."—Under a will giving two-thirds of testator's estate in trust to pay the net income to his two daughters during their lives, and, on the decease of either, one-half of such two-thirds to the issue of such daughter, and, if no issue, this half to testator's next of kin, held that "next of kin" meant those entitled to take under the statutory distribution of intestates, and not the nearest blood relations according to the law of consanguinity.—Close v. Benham, Conn., 115 Atl. 626.

63. **Workmen's Compensation Act**—Course of Employment.—A workman, whose duty required him to collect the signal lanterns placed on the work and carry them to the toolhouse, was within the protection of the Workmen's Compensation Act, while on his way to the toolhouse, although he did not follow the public streets, but took a generally traveled and shorter route along a railway track.—Peterson v. O'Neil, Minn., 185 N. W. 948.

64.——Course of Employment.—Where a railroad employee in charge of a pumping station and also acting as custodian of the railroad's property at such station had no authority or permission to sell gasoline, but agreed to sell some to persons who did not intend to pay therefor, and by whom he was killed in an attempt to lock him up in order that they might make their escape without paying, the injury causing death did not arise out of and in the course of the employment within Workmen's Compensation Act.—Chicago & A. R. Co. v. Industrial Commission, Ill., 133 N. E. 204.

65.——Partial Incapacity.—The part of an employe's earnings after injury due to an increase of rate of pay after the injury for the class of work at which he was employed is properly left out of account in determining the extent of his partial incapacity, relative to award under Workmen's Compensation Act.—Kanawha Fuel Co. v. Industrial Commission, Ill., 133 N. E. 238.

66.——Posthumous Children. — Posthumous children are entitled to compensation due as the result of death of a parent under the Workmen's Compensation Act in view of Comp. Laws 1915, § 11807; such a child being totally "dependent" upon parents for nourishment.—King v. Peninsular Portland Cement Co., Mich., 185 N. W. 858.